

DISTRIBUTED  
AUG 10 78

77 - 1680

Supreme Court, U. S.  
FILED

AUG 9 1978

MICHAEL ROBAX, JR., CLERK

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1977

—  
No. 77-1591  
—

THE PEOPLE OF THE STATE OF MICHIGAN,  
  
Petitioner,  
  
vs.  
  
GARY DeFILLIPPO,  
  
Respondent.

—  
SUPPLEMENTAL MEMORANDUM IN  
SUPPORT OF PETITION FOR A WRIT OF  
CERTIORARI TO THE COURT OF APPEALS  
OF THE STATE OF MICHIGAN  
—

WILLIAM L. CAHALAN  
Prosecuting Attorney  
Wayne County  
State of Michigan

EDWARD REILLY WILSON  
Chief Appellate Attorney

TIMOTHY A. BAUGHMAN (P 45794)  
Assistant Prosecuting Attorney  
12th Floor, 1441 St. Antoine  
Detroit, MI 48226  
Phone: (313) 224-5794

QUESTION PRESENTED

Petitioner submits the attached supplemental authority and rationale under Rule 24 in Support of Question I in the Petition for a Writ of Certiorari:

Is an arrest made in good faith reliance on an ordinance which has not been declared unconstitutional a valid arrest regardless of the ultimate validity of the ordinance?

SUPPLEMENTAL AUTHORITY AND REASON  
FOR GRANTING THE WRIT

In this Court's recent decision of Scott v United States, \_\_\_\_ US \_\_\_\_, 56 LEd 2d 168 (May 15, 1978) the Court analyzed the distinction ". . . between what is necessary to establish a statutory or constitutional violation and what is necessary to support a suppression remedy once a violation has been established." 56 LEd 2d at 176. The position of the Government, which also was the basis of the Court of Appeals decision, was held by this Court to embody the "proper approach":

In view of the deterrent purposes of the exclusionary rule consideration of official motives may play some part in determining whether application of the exclusionary rule is appropriate after a statutory or constitutional violation has been established. But the existence vel non of such a violation turns on an objective assessment of the officer's action in light of the facts and circumstances confronting him at the time. Subjective intent alone, the Government contends, does not make otherwise lawful conduct illegal or unconstitutional. 56 LEd 2d at 176-177.

In a case such as the instant case, then, where an officer arrests pursuant to an ordinance which has not been declared unconstitutional at the time of the arrest, and searches the person of the arrestee incident to that arrest, the arrest is not unconstitutional and the search is not unreasonable. Since, as stated in Scott, supra, the existence of a constitutional violation turns on an objective assessment ". . . of the officer's actions in light of the facts and circumstances confronting him at the time" (emphasis added), it cannot be said that a circumstance not known to the officer at the time of the arrest (that the ordinance would be declared unconstitutional) relates back to his conduct, invalidating the arrest and search.

Petitioner therefore submits that application of the exclusionary rule is plainly inappropriate in cases where no constitutional violation occurred. The Michigan Court of Appeals should be reversed.

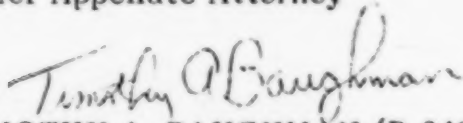
CONCLUSION

It is respectfully submitted that for the reasons outlined above, and the reasons outlined in the Petition for a Writ of Certiorari, a substantial federal question to which there is disagreement in the federal circuits is presented such that plenary review should be granted.

Respectfully submitted,

WILLIAM L. CAHALAN  
Prosecuting Attorney  
Wayne County  
State of Michigan

EDWARD REILLY WILSON  
Chief Appellate Attorney

  
TIMOTHY A. BAUGHMAN (P-24381)  
Assistant Prosecuting Attorney  
12th Floor, 1441 St. Antoine  
Detroit, MI 48226  
Phone: (313) 224-5794

Dated: July 21, 1978

TAB:pd